Supreme Court, U. S.
FILED
JAN 24 1978
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1977

NO. 77-1047

CALVIN T. SHERARD
Petitioner

V.

BERNARD GINSBERG, et al,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE U.S. APPEALS COURT, SIXTH CIRCUIT

CALVIN T. SHERARD
In Pro Per
4095 Webb #105
Detroit, Michigan 48204
Tel. (313) 935-0157

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IN THE
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NO._____

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CALVIN T. SHERARD, Petitioner

V.

BERNARD GINSBERG, et al,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE U.S. APPEALS COURT, SIXTH CIRCUIT

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the United States:

Calvin T. Sherard, the Petitioner herein prays that a Writ of Certiorari issue to review the Judgment and opinion of the United States Court of Appeals for the Sixth Circuit, entered in the above entitled case on July 6, 1977.

OPINIONS BELOW

The July 6, 1977 opinion of the U.S. Court of Appeals for the Sixth Circuit,

whose judgment is herein sought to be reviewed, is reprinted in Appendix A-1.

The Amended Order, To Order To Dismiss which was entered October 19, 1976, is reprinted in Appendix B-1.

The October 19, 1976 Order To Dismiss, is reprinted in Appendix C-1.

JURISDICTION

The Order of United States District Court for Eastern Michigan was entered October 19, 1976, and was subsequently amended November 1, 1976.

A timely Notice of Appeal was filed November 18, 1976.

A timely Request for Extension of Time for Transmission of the Record was filed December 15, 1976 and granted December 28, 1976, to February 14, 1977.

A timely Record on Appeal was filed and docketed March 10, 1977 in the United States Court of Appeals for the Sixth Circuit.

A timely Motion to Affirm was filed by Respondent Wayne County Circuit Court officials, March 24, 1977.

An untimely Motion to Affirm, or in the Alternative, Motion to Join in the Motion to Affirm previously filed by separate Defendants-Appellees, was filed by the State of Michigan, May 9, 1977.

An Order to Affirm by U.S. Appeals Court for the Sixth Circuit was granted to Respondent Wayne County Circuit Court officials and to Respondent State of Michigan, and entered July 6, 1977.

Petitioner was unaware of Appeals Court action affirming the District Court Order to Dismiss, because Respondents are immune from liability for damages, and was entered July 6, 1977.

On November 28, 1977 Petitioner contacted Appeals Court Clerk Office by telephone, to inquire about the case herein, and was told of Appeals Court Order affirming the District Court Order to Dismiss, and that the Court Order that was sent to Petitioner through United States mail had been returned, marked "Return to Sender", "No Forwarding Address". Petitioner told the clerk office that there had been no change in Petitioner's address, at that time. Copy or return envelope and Petitioner's rent receipt for that month, showing no change in Petitioner's address is marked Exhibit 1, in Appendix D-1.

No attempt was made by Court Clerk Office to contact Petitioner by phone.

The Petitioner was told by the Supreme Court Clerk Office to file Petition with a notation as to its untimeliness, and the Petition would be docketed and sent to Court.

This Court's jurisdiction is invoked pursuant to 28 U.S.C.A. § 1254 (1).

QUESTIONS PRESENTED

Are quasi-judicial officials, acting under color of state law, immunized from a damage suit, which is a result, of depriving a United States citizen of the due process clause of the Fourteenth Amendment to the United States Constitution?

Is the State of Michigan immunized, from a damage suit which is a result of State judicial officials who while acting under color of State Law, deprived a United States citizen of guaranteed rights under the Fourteenth Amendment to the United States Constitution?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C.A. § 1343 - Grants the right to U.S. citizens to recover damages to his person or property, or because of thedeprivation of any right or privelege of a citizen of theUnited States, by any act done in furtherance of any conspiracy mentioned in § 1985 of Title 42, relating to interference with civil rights.

2. Civil Rights Acto of 1871, 13.4 (1) provides acivil action for deprivation of rights, privileges, or immunities secured by the Constitution and Laws of the United States, and a person responsible for the natural consequences of hisuactions which result in deprivation of constitutional rights.

STATEMENT OF CASE

Petitioner and wife, Bettye Sherard were ordered to appear before the Honorable Nathan Kaufman, Judge in Wayne County Circuit Court, on September 13, 1974, for a hearing on a complaint, filed by Wayne County Social Services.

Petitioner and wife identified themselves to Assistant Prosecutor, Bernard Ginsberg, of the Friend of the Court, Wayne County Circuit Court, who gave Petitioner's wife permission to leave to return to work. Later, Assistant Prosecutor Ginsberg, took petitioner to a back room where he told petitioner that he had been ordered by Judge Kaufman to pay $22.50 per week, per child (2).

Petitioner requested to be taken before Judge Kaufman, so he could plead his case, because he, Petitioner, was not guilty. Assistant Prosecutor Ginsberg told Petitioner, "I cannot do that, the Judge has already ruled."

Assistant Prosecutor Ginsberg conspired under color of State Law, with the other Respondents, who are Wayne County judicial officials, to enforce this Court Order, because of a vendetta the Assistant Prosecutor had against Petitioner, that took place in Wayne County Circuit Court Case #215-833.

Assistant Prosecutor Ginsberg's action is pursuant to Powell v. Alabama, 287 U.S. 45 (1932). In this action, Judge Suther-

BEST COPY AVAILABLE

land stated:

> "It never has been doubted by this Court, or any other, so far as we know, that notice and hearing are preliminary steps essential to the passing of any enforceable judgement."

The jurisdiction of the District Court was invoked pursuant to 28 U.S.C.A. § 1343, and not pursuant to 42 U.S.C.A. § 1983, as stated in the District Court Amended Order to Dismiss. Jurisdiction statement is reprinted in Appendix E and marked Exhibit 2.

Motion to Correct Record from 42 U.S.C.A. § 1983 to 28 U.S.C.A § 1343 was filed in District Court Jan. 4, 1977; that part of docket sheet is reprinted in Appendix F and marked Exhibit 3.

During the District Court hearing, the petitioner asked Judge James P. Churchill if the question of immunity applied to violation of the Fourteenth Amendment? Question and answer are reprinted in Appendix F and marked Exhibit 3, and appears on pages 22 and 23 of the transcript.

REASON FOR GRANTING WRIT

1. Certiorari should be granted because, no state official, including action of State Courts and state judicial officials acting under color of State Law, are immunized from violating the provisions of the Fourteenth Amendment

to the U.S. Constitution.

Shelley v. Kraemer, 334 U.S. 1; 68 S. Ct. 836; 92 K, Ed., 1161 (1948) - The Court stated:

> "It has never been suggested that State Court action is immunized from the operation of those provisions (14th Amendment) simply because the act is that of the judicial branch of the State Government."
>
> "The short of the matter is that from the time of the adoption of the Fourteenth Amendment until the present, is has been the consistent ruling of this court that the action of the States to which the Amendment has reference, includes action of State Courts and State judicial officials.

Theodore B. Kapferman's "The Family Legal Advisor", page 150, Immunity of State Officials:

> "No one, not even the Govenor of a State is immuned from violations of the Constitution of the United States."

2. The immunity of a prosecutor, is not without limitation:

Lewis v. Brautigam, 227 F. 2d 124, 55 A.L.R. 2d (C.A. 5. 1955) The Court stated:

> "Because immunity is conferred on an individual solely by virtue of the office he holds, reason requires

us to adopt a rule which does not provide immunity for those acts which are done clearly outside the authority or jurisdiction of the office."

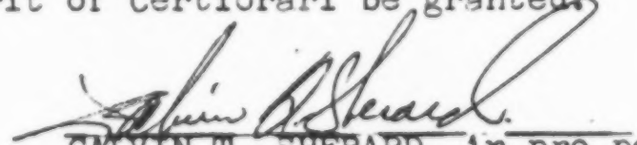
3. Action of State Courts and of judicial officiers under color of state law is an action by the State within the meaning of the Fourteenth Amendment.

Shelley v. Kraemer 334 U.S. 1; 68 S. Ct. 836; 92 L. Ed. 1161 (1948). The Court stated:

> "That the action of State Courts and of judicial officers in their official capacities is to be regarded as action of the state within the meaning of the Fourteenth Amendment."

CONCLUSION

Wherefore, Petitioner respectfully prays that a Writ of Certiorari be granted.



CALVIN T. SHERARD, in pro per
4095 Webb, #105
Detroit, Michigan 48204
(313) 935-0157

Date Jan. 17, 1978

Received by Petitioner
12/12/77

APPENDIX A

77-1131

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CALVIN T. SHERARD	:	FILED
Plaintiff-Appellant	:	July 6, 1977
vs.	:	John P. Hehman,
BERNARD GINSBERG, et al.	:	Clerk
Defendants-Appellees	:	Order

- - - - - ---

BEFORE WEICK, EDWARDS AND CELEBREZZE, Circuit Judges.

The defendants-appellees, pursuant to Rule 8, Rules of the Sixth Circuit, move to affirm an order dismissing the plaintiff-appellant's civil rights complaint for failure to state a cause of action for which relief could be granted.

The plaintiff filed this action pursuant to 42 U.S.C. § 1983, seeking damages for the alleged deprivation of due process. The defendants are the State of Michigan and four employees of the Friend of the Court for the Circuit Court of Wayne County, Michigan. In an Order of October 29, 1976, District Judge James P. Churchill of the Eastern District of Michigan held the defendants to be immune from liability for damages under § 1983 and dismissed the action.

Upon consideration of the record, the Court concludes the District Court was correct in its determination, and, therefore, it is ORDERED that the motion to affirm be granted and the judgement of the District Court be and it is hereby affirmed.

ENTERED BY ORDER OF THE COURT
(Signed) John P. Hehman,
Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CALVIN T. SHERARD,

Plaintiff CIVIL NO. 76-71785

-vs-

BERNARD GINSBERG, Asst. Friend of the Court,
AUGUST KLEIN, Asst. Friend of the Court,
ARDA BAREHOLTZ, Asst. Friend of the Court,
KENNETH ROSS, Investigator, Family Support Div.,
THE STATE OF MICHIGAN, et al.,

Defendants.

AMENDED ORDER TO DISMISS

At a session of said court held in the Federal Building and U.S. Courthouse, Detroit, Michigan, on October 28, 1976.

Present: HONORABLE JAMES P. CHURCHILL
United States District Judge

On October 19, 1976, this Court entered an order of dismissal as to all the above-named defendants for the stated reason that the Court lacked jurisdiction over the subject matter. The order should have read, and is hereby amended to read, that the action is dismissed as to all the above named defendants pursuant to Rule 12(b) (6) of the Federal Rules of Civil Procedure for failure to state a cause of action upon which relief can be granted.

The complaint fails to state a claim as to defendants Bernard Ginsberg, August Klein, Arda Barenholtz, and Kenneth Ross because these defendants were acting in a quasi-judicial capacity and therefore are immune from a damage suit. The complaint fails to state a claim as to defendant State of Michigan because states are not subject to suits brought under 42 U.S.C. § 1983.

(Signed) JamesP. Churchill
United States District Judge

A TRUE COPY

APPENDIX C

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF MICHIGAN

CALVIN T. SHERARD,

Plaintiff,

Civil Action
No. 671785

v

BERNARD GINSBERG, Asst. Friend of the Court
AUGUST KLEIN, Asst. Friend of the Court
ARDA BARENHOLTZ, Asst. Friend of the Court
KENNETH ROSS, Investigator, Family Support Div.
THE STATE OF MICHIGAN, et al.

Defendants.

ORDER TO DISMISS

At a session of said Court held in the Federal Building in the City of Detroit, County of Wayne, State of Michigan, this day of

October 18, 1976

PRESENT: HONORABLE JAMES P. CHURCHILL
United States District Judge

This cause came on to be heard on the motion of the Defendants as set forth above, to dismiss the above-entitled action as to said defendants. The defendants were represented by DAVID R. KAPLAN, Principal Attorney and FRANK L. CHARBONNEAU, Assistant Corporation Counsel, for the Wayne

C-2
County Office of Corporation Counsel;
Plaintiff appeared in pro per.

The Court having heard arguments from all of the said parties and being fully advised in the premises, hereby deems that it lacks jurisdiction over the subject matter and therefore enters an Order as follows:

IT IS HEREBY ORDERED that the Motion to Dismiss as to the above-named Defendants is hereby granted and this action is dismissed with prejudice.

JAMES P. CHURCHILL
United States District Judge

A TRUE COPY

EXHIBIT 1

APPENDIX D

12.

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
CINCINNATI, OHIO 45202

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE $300

RETURN TO WRITER
NOT DELIVERABLE AS ADDRESSED
NO FORWARDING ORDER ON FILE

RENT RECEIPT

A. & N. PARKER CO.
WEBB BUILDING
4095 Webb, Detroit, Michigan 48204

No. 713

DETROIT, MICH. 7-5 1977

RECEIVED OF Mr Calvin Sherard

APT. NO. 305 APARTMENT Webb Bldg

One hundred & two DOLLARS $ 102.00

FOR Rent for Apt July 1st — August 1st

CHECK .....$ 102.00

CURRENCY ..:$

TOTAL .....$ 102.00

BAL. DUE ...$

A. & N. PARKER CO.
WEBB BUILDING
RECEIVED BY Georgia Allen

Notice of Moving Must be Given as Required by Law
Tenant Must Give 30 Days Written Notice Before Moving

U.S. MAIL

Mr. Calvin T. Sherard
4095 Webb, Apt. 305
Detroit, Michigan 48204

RECEIVED
JUL 14 1977
JOHN P. HEHMAN, Clerk

APPENDIX E EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

CALVIN T. SHERARD,

Plaintiff

v. CIVIL ACTION NO. 671785

BERNARD GINSBERG, Asst. Friend of the Ct.
AUGUST KLEIN, Asst. Friend of the Court
ARDA BARENHOLTZ, Asst. Friend of the Ct.
KENNETH ROSS, Investigator, Fam. Support Division (Wayne County Circuit Court)
THE STATE OF MICHIGAN, et al.

Defendants

COMPLAINT
CIVIL SUIT FOR DAMAGES

Now comes Calvin T. Sherard, plaintiff, in pro per in the above entitled complaint involving deprivation of rights that are guaranteed under the Fourteenth Amendment to the U.S. Constitution, to all citizens of the United States. This deprivation took place under color of state. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343.

APPENDIX F EXHIBIT 3

DOCKET SHEET
OF DISTRICT COURT

1977
Jan. 4 - #25 - Ptf's request for entire transcript for the appeals court DD1/25/77

Jan. 4 - #26 - Ptf's motion to correct record DD1/25/77

APPENDIX G EXHIBIT 4

TRANSCRIPT OF DISTRICT COURT

PAGES 22 AND 23 JUDGE JAMES P. CHURCHILL

Mr. Sherard: Does that include a violation of the Fourteenth Amendment?

The Court: That is precisely what I am telling you. That is precisely what the, United States Supreme Court said and will say if the case gets back to them again.